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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,916	11/18/2003	Greg Christopher JR.	07844-602001-P555	6410
21876 7590 03/07/2007 FISH & RICHARDSON P.C. P.O. Box 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER CHEN, QING	
			ART UNIT 2191	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/716,916	Applicant(s) CHRISTOPHER, GREG	
	Examiner Qing Chen	Art Unit 2191	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-24.
- Claim(s) withdrawn from consideration: _____.

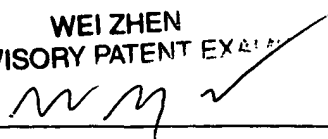
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

WEI ZHEN
 SUPERVISORY PATENT EXAMINER



Continuation of 3. NOTE: Applicant's arguments are not persuasive.

In the remarks, Applicant argues that:

Breggin simply does not contemplate any expectation of volatility in software installation, nor does Breggin create data representing a new expectation of stability for a given resource associated with a software installation.

Examiner's response:

As previously pointed out in the Final Rejection (mailed on 12/07/2006) and currently maintained by the Examiner, Breggin et al. disclose an expectation of volatility and creating data representing a new expectation of stability for a given resource associated with a software installation (see Figure 4; Column 3: 60-63; Column 8: 24-50). The installation database lists information pertaining to the install program, including exceptions. During the analysis of the install program before the installation, any discrepancies that would occur in the installation result are recorded as exceptions, meaning that the exception is the new expectation for an installation result as required by the claim. The exceptions provide error or warning information on the discrepancies (transition from an expectation of volatility to an expectation of stability) that may be a problem in the installation/execution of the program.

In the remarks, Applicant argues that:

Breggin fails to disclose "identifying, based on the comparison, resources that have not changed in their installation result from the previous software installation to the current software installation, despite an expectation that the unchanged resources should change from the previous software installation to the current software installation" as recited in claim 10.

Examiner's response:

As previously pointed out in the Final Rejection (mailed on 12/07/2006) and currently maintained by the Examiner, Breggin et al. disclose "identifying, based on the comparison, resources that have not changed in their installation result from the previous software installation to the current software installation, despite an expectation that the unchanged resources should change from the previous software installation to the current software installation" (see Figure 5; Column 9: 55-66; Column 10: 9-15). All of the information obtained in the comparison, including exceptions, is graphically displayed (identifying, based on the comparison). If a column has no lower entry for a file (an expectation that the unchanged resources should change), then there is no exception for the file (resources that have not changed). In other words, since the file has no discrepancy, the file is not expected to change. Otherwise, the column would have an upper and lower entry for the file indicating any discrepancy.

In the remarks, Applicant argues that:

Breggin discloses identifying "exceptions" and the reporting of these "exceptions" in Breggin are merely observed differences or discrepancies. These observed differences "include 'file is missing,' 'file is different size,' 'file is different date,' ..." and are simply not "expectations that indicates which of the resources should be in flux, and which of the resources should be stable" as in claim 24. Contrary to the Office's contention, the cited portions of Breggin do not disclose "a record of installation expectations," much less "comparing the software trend comparison with a record of installation expectations" as recited in claim 24.

Examiner's response:

Examiner disagrees with Applicant's assertion that the "exceptions" disclosed in Breggin et al. are merely observed differences or discrepancies. Breggin et al. disclose that an installation analysis tool creates a verification or installation database based on an analysis of the install program before the installation (see Column 3: 60-63). An analysis of the install program before the installation would indicate any resources that should be in flux and any resources that should be stable based on the information gathered from the analysis, such as exceptions. The analysis results, such as "file is missing," "file is different size," and "file is different date," are all expected results of the resources prior to the installation of the install program because these results are used to locate or identify potential problems concerning the installation. As previously pointed out in the Final Rejection (mailed on 12/07/2006) and currently maintained by the Examiner, Breggin et al. disclose a record of installation expectations and comparing the software trend comparison with a record of installation expectations (see Figures 4 and 5; Column 9: 55-66; Column 10: 3-15). Note that the contents of the installation database contain a record of installation expectations as depicted in Figure 4.

In the remarks, Applicant argues that:

Breggin fails to disclose "presenting potential problems with the current software installation based on the comparison of the software trend comparison with the expectations record" as recited in claim 24.

Examiner's response:

As previously pointed out in the Final Rejection (mailed on 12/07/2006) and currently maintained by the Examiner, Breggin et al. disclose "presenting potential problems with the current software installation based on the comparison of the software trend comparison with the expectations record" (see Figure 3B: 236; Figure 5; Column 9: 55-58; Column 10: 17-28). All of the information obtained in the comparison, including exceptions, is graphically displayed (presenting potential problems based on the comparison).

In the remarks, Applicant argues that:

Breggin does not disclose "the install controller ... collects test results to be presented in a report comprising a baseline-update interface" because in Breggin, the installation database does not collect test results but simply is used as a comparison for generating "exceptions."

Examiner's response:

As previously pointed out in the Final Rejection (mailed on 12/07/2006) and currently maintained by the Examiner, Breggin et al. disclose "the install controller ... collects test results to be presented in a report comprising a baseline-update interface" (see Figure 3B: 236; Figure 5; Column 4: 16-21; Column 9: 55-58; Column 10: 17-28). The installation program or script, a list of program files, data files, and/or registry entry changes are test results that are written into the installation database.

In the remarks, Applicant argues that:

Kruger does not disclose "the install controller automatically dispatches installation to the one or more install slave machine" as recited in claim 19. Contrary to the Office's assertion, the cited portion of Kruger (Col. 4, lines 19-27) merely discloses sending the instructions, files and program to other computer systems and does not disclose "automatically dispatches installation" because nowhere does Kruger contemplate automatically dispatching the programs.

Examiner's response:

As previously pointed out in the Final Rejection (mailed on 12/07/2006) and currently maintained by the Examiner, Kruger et al. disclose "the install controller automatically dispatches installation to the one or more install slave machine" (see Column 4: 1-5). The process of "sending" a software program is functionally equivalent to the process of "automatically dispatching" the software program, since the software program is deployed to other computer systems for installation.